



8320-01

DEPARTMENT OF VETERANS AFFAIRS

5 CFR Part 10501

RIN 3209-AA64

Supplemental Standards of Ethical Conduct for Employees of the Department of Veterans Affairs

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (“VA” or “Department”), with the concurrence of the Office of Government Ethics (OGE), is issuing this proposed rule for Department of Veterans Affairs employees. This document supplements the Standards of Ethical Conduct for Employees of the Executive Branch (OGE Standards) issued by OGE and is necessary because it addresses ethical issues unique to the Department of Veterans Affairs. The proposed rule requires employees to seek prior approval for outside employment with a prohibited source, with or without compensation. Prior approval would also be required for serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization. Attorneys in the Department of Veterans Affairs Office of General Counsel (OGC) would be subject to additional requirements regarding the outside practice of law.

DATES: Comments must be received on or before [insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Comments may be submitted through www.Regulations.gov.

Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <https://www.regulations.gov>. VA will not post on Regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

FOR FURTHER INFORMATION CONTACT: Bruce Barnett, Deputy Ethics Official/Staff Attorney, Ethics Specialty Team, VA Office of General Counsel, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 503-8435. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the OGE Standards. See 57 FR 35006-35067, as corrected at 57 FR 48557, 57 FR 52483, and 60 FR 51167, with additional grace period extensions for certain existing provisions at 59 FR 4779-4780, 60 FR 6390-6391, and 60 FR 66857-66858. The OGE Standards, codified at 5 CFR part 2635, effective February 3, 1993, established uniform standards of ethical conduct that apply

to all executive branch personnel.

Section 2635.105 of the OGE Standards authorizes an agency, with the concurrence of OGE, to adopt agency-specific supplemental regulations that are necessary to properly implement its ethics program. The Department of Veterans Affairs, with OGE's concurrence, has determined that the following supplemental regulations are necessary for successful implementation of its ethics program in light of the unique programs and operations of the Department.

II. Analysis of the Regulation

Pursuant to Section 2635.803 of the OGE Standards, where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall by supplemental regulation require employees or any category of employees to obtain approval before engaging in specific types of outside activities, including outside employment. Additionally, under Section 2635.403(a) of the OGE Standards, an agency may, by supplemental regulation, prohibit its employees from having outside employment or other financial interests when the agency determines such outside employment or financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Outside employment and activities prohibited by an agency's supplemental regulation would be considered "conflicting outside employment" or "conflicting outside activities" and therefore barred by 2635.802(a) of the OGE Standards.

VA has determined that it is necessary and desirable for the purposes of administering its ethics program to impose on its employees the prior approval requirements described below. VA also has determined that certain employment or activities by attorneys in the Office of General Counsel involving the outside practice of law would cause a reasonable person to question the impartiality and objectivity with which VA programs are administered, necessitating additional restrictions for those

employees.

Proposed Section 10501.101 General

Section 10501.101 explains that these regulations apply to VA employees and supplement the OGE Standards.

Proposed Section 10501.102 Prior approval for certain outside employment and other outside activities.

Paragraph (a) requires a VA employee, other than a special Government employee, to obtain written approval before engaging in certain outside employment or other outside activities. The prior approval requirement will be an integral part of VA's ethics program. VA believes this requirement is necessary to ensure that an employee's participation in outside employment or other outside activities does not adversely affect VA operations or place the employee at risk of violating applicable statutes and regulations governing employee conduct.

Paragraph (a)(i) requires prior written approval before engaging, with or without compensation, in outside employment, as defined in paragraph (b)(2) below, with a prohibited source (an entity that seeks official action by VA, does business or seeks to do business with VA, conducts activities regulated by VA, has interests that may be substantially affected by performance or nonperformance of the employee's official duties, or is an organization a majority of whose members fit into one or more of those categories). For example, VA spends millions of dollars on contracts with corporations and other entities for pharmaceuticals, medical devices, services, and other items in support of Veteran health care, engages in cooperative research and development agreements with pharmaceutical and medical device companies, and affiliates with medical schools whose physician and researcher employees also have appointments at

VA. Requiring approval prior to engaging in outside employment with these and other prohibited sources is critical to protect against questions arising regarding the administration of VA programs and the impartiality and objectivity of VA employees. Because of the definition of outside employment in paragraph (b)(2), the prior approval requirement in paragraph (a)(i) does not attach to participation in activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless the participation involves the provision of professional services or advice for compensation.

Paragraph (a)(ii) captures activities with certain nonprofit organizations that would not be captured by paragraph (a)(i) because of the definition of employment under paragraph (b)(2). It requires prior written approval before serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization, such as a Veteran Service Organization or other organization, business, corporation, or charity with a mission focused on Veterans. Requiring prior approval for these activities is critical to protect against questions arising regarding the administration of VA programs and the impartiality and objectivity of VA employees. For example, some Veteran-centric organizations receive agency-provided office space and office facilities in accordance with 38 U.S.C. 5902, have representatives that prepare, present, and prosecute claims under laws administered by the VA, are engaged in public-private partnerships with VA, or have other ties to VA regulated by Department law, regulation, or policy. They are prohibited sources, yet they typically also are nonprofits with a mission that is charitable, public service, or civic in nature. As such, prior approval for activities with many Veteran-centric organizations would not generally be required under paragraph (a)(1) because the definition of “employment” under paragraph (b)(2) excludes participation in the activities of certain nonprofits. The additional prior approval requirement of paragraph

(a)(ii) is intended to address potentially serious ethical issues stemming from personal capacity leadership in, or other activities with, these organizations. The smaller universe of activities with Veteran-centric organizations requiring prior approval compared to what is required in paragraph (a)(i) for prohibited sources reflects the Department's historical experience with ethical issues arising from Veteran-centric organizations and the types of positions that are more likely to be potentially problematic.

Paragraph (b) sets forth definitions of the terms used in this section. Proposed paragraph (b)(1) defines "agency designee" by reference to the definition provided in 5 CFR 2635.102(b) of the OGE Standards. Paragraph (b)(2) defines "employment" to include non-Federal employment or a business relationship involving the provision of personal services, whether or not for compensation. The definition excludes participation in outside activities with the types of nonprofit organizations that VA deems unlikely to be problematic, unless such participation involves the provision of professional services (compensated or not) or advice for compensation or actual expenses. Paragraph (b)(3) defines "prohibited source" in the same terms as that found in 5 CFR 2635.203(d) of the OGE Standards. Paragraph (b)(4) defines "Veteran Service Organization" to be an organization that is recognized by the Secretary of Veteran Affairs for the representation of Veterans under 38 U.S.C. 5902. Paragraph (b)(5) defines "Veteran-centric organization" broadly to be any organization with a stated purpose of providing services or assistance to Veterans or their families, or of soliciting donations for veterans or their families.

Paragraph (c) sets out the procedures for requesting prior approval to engage in covered outside employment or activities. Pursuant to these procedures, employees must make a written request directed to their supervisor no later than fourteen (14) calendar days before beginning the activity. The employee's supervisor is required to provide a statement addressing the extent to which the employee's duties are related to

the proposed outside activity and forward both the request and the supervisor's statement to an agency designee for a determination on the request.

Paragraph (d) sets out the standard to be applied by the agency designee in acting on requests for prior approval of outside employment as broadly defined by paragraph (b)(2) and for prior approval of outside activities with Veteran-centric organizations as broadly defined by paragraph (b)(5). Approval will be granted unless it is determined that the outside employment or other activity is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Under paragraph (e), the DAEO may issue instructions or internal directives governing the submission of requests for approval of outside employment and may exempt categories of employment from the prior approval requirement of this section based on a determination that the employment within those categories generally would be approved and is not likely to involve prohibited conduct or create an appearance of lack of impartiality. The DAEO may also in these instructions establish a grace period for new employees to file a request for approval.

Paragraph (f) provides that within 14 calendar days of a significant change in the nature or scope of the outside employment or activity or in the employee's official Department position or duties, the employee must submit a revised request for approval. Employment that began before the effective date of this part is also subject to this requirement.

Proposed Section 10501.103 Additional rules for attorneys in the Office of the General Counsel

Paragraph (a) requires OGC attorneys to obtain prior written approval before engaging in the "outside practice of law," compensated or not, as it is defined in that paragraph. OGC attorneys must obtain the approval in accordance with the procedures

in § 10501.102(c) and the standard for approval in paragraph (b).

Paragraph (b) sets out the standard to be applied in reviewing requests for prior approval for the outside practice of law. Approval will be granted unless it is determined that the outside practice of law is expected to involve conduct prohibited by statute, Federal regulations, including the OGE Standards, or paragraph (c) of this section. This standard is consistent with the standard of approval in proposed § 10501.102(d).

Paragraph (c)(1) prohibits OGC attorneys from engaging in the outside practice of law where the activity, in fact or in appearance, may require the assertion of a legal position that conflicts with the interests of the Department. OGC attorneys are also prohibited from engaging in any outside law practice that might require the interpretation of a statute, regulation, or rule administered or issued by the Department. Attorneys in OGC are also prohibited from engaging in any outside practice of law where a supervisory attorney determines that such outside practice of law would conflict with the employee's official duties or create the appearance of a loss of the attorney's impartiality as prohibited by 5 CFR 2635.802. Further, as prohibited by 18 U.S.C. 205, OGC attorneys may not act as an agent or attorney in any matter in which the U.S. Government is a party or has a direct and substantial interest. Paragraph (c)(2) enunciates certain exceptions from the prohibitions listed in paragraph (c)(1). Paragraph (c)(3) outlines the procedures for the use of those exceptions.

Asserting Contrary Legal Positions

Paragraph (c)(1)(i) is consistent with the rules of professional conduct governing the attorney-client relationship. Precluding any outside law practice that may require the assertion of legal positions adverse to VA derives from the unique and sensitive relationship between an attorney and a client, which for an OGC attorney is VA.

Moreover, the Department has a legitimate interest in maintaining the consistency and credibility of the Department's positions before the Federal courts. For

the most part, the representational bans contained in 18 U.S.C. 203 and 205 would preclude outside practice by OGC attorneys in the Federal courts because nondiversity cases within Federal court jurisdiction generally involve controversies in which the United States is a party or has a direct and substantial interest. However, cases may arise involving the interpretation or application of Federal statutes or regulations that do not necessarily implicate the direct and substantial interests of the United States.

Although very unlikely, OGC attorneys representing private clients might appear in front of the same judges before whom they appear in their official capacities and argue different interpretations of Federal statutes or regulations. Depending upon the visibility of the issues and any attendant controversy, asserting conflicting legal positions may diminish the persuasiveness of the advocate, erode judicial confidence in the integrity of the Department's attorneys, and undermine the credibility of both clients. Section 10501.103(c)(1)(i) is intended, therefore, to safeguard the interests of the Department as the primary client to which the attorney employee owes a professional responsibility.

Interpreting Department of Veterans Affairs Statutes

Paragraph (c)(1)(ii) is intended to effectuate the prohibition on the use of public office for private gain, to preclude inconsistent legal positions on core issues affecting the interests of VA, and to protect the public interest by preventing any public perception that an attorney's employment with VA signifies extraordinary competency on agency related issues, or that an OGC attorney's interpretation implicitly is sanctioned or approved by VA. For the most part, the outside practice of law involving agency statutes, rules, or regulations would be precluded as a conflicting activity. If the subject matter of proposed representation and the assigned duties of the attorney correlate, the outside activity potentially would require, under the standards set forth in 5 CFR 2635.402 and 2635.502, the employee's disqualification from matters so central or

critical to the performance of the employee's official duties that the employee's ability to perform the duties of the employee's position would be materially impaired. Similarly, representation on matters involving the application of agency statutes may implicate direct and substantial interests of the United States, thus contravening the representational bans in 18 U.S.C. 203 and 205.

Paragraph (c)(1)(ii) reaches situations not specifically addressed in proposed § 10501.102, although the regulation to some extent covers areas that would be subject to those requirements. Absent the prohibition contained in this section, an OGC attorney conceivably could obtain outside employment advising, as opposed to representing, a private client on areas of agency law to which the attorney is not assigned. In these circumstances, there is considerable risk that the outside legal employment position held by the individual may convey an impression of authoritativeness or access to non-public information or agency experts that may not necessarily be warranted. Moreover, private clients, and those aware of the OGC attorney's involvement, may assume incorrectly that the attorney's interpretation is effectively a VA interpretation as well. Rendering legal services that may require the interpretation of any statute, regulation, or rule administered or issued by VA creates an appearance that the employee has used the employee's official position to obtain an outside business opportunity. Further, if counsel were engaged in the outside law practice that involved Department statutes, the potential risk for asserting legal positions adverse to the interests of the Department would be heightened. Similarly, as established at 5 CFR 2635.802(b), it would undermine the effectiveness of the attorney and the attorney's duty of loyalty to the Department where an employee's supervisory attorney has determined that the outside practice of law would create a conflict of interest, or the appearance of a loss of impartiality, requiring the attorney's Department disqualification from matters central to the attorney's performance of official duties. In such situations, the attorney's duty of

loyalty to the Department as the attorney's primary client must take first priority.

Acting as an Agent

Paragraph (c)(1)(iii) highlights the proscription in 18 U.S.C. 205 barring employees from acting as an agent or attorney in any matter in which the United States Government is a party or where the Government has a direct and substantial interest.

Exceptions

Paragraph (c)(2) provides exceptions to the prohibitions set forth in paragraph (c)(1). Consistent with the exceptions to the representational bans contained in 18 U.S.C. 203 and 205, nothing in this regulation precludes representation, if approved in advance by the appropriate official or supervisor, that is: (1) rendered, with or without compensation, to specified relatives or an estate for which an employee serves as a fiduciary; (2) provided, without compensation, to an employee subject to disciplinary, loyalty, or other personnel administration proceedings; or (3) rendered, without compensation to a voluntary employee nonprofit organization or group (such as child care centers, recreational associations, professional organizations, credit unions or other similar groups) before the U.S. Government under certain circumstances (18 U.S.C. 205 restricts employees from representing an employee organization or group in claims against the Government, in seeking grants, contracts or funds from the Government, or in a judicial or administrative proceeding where the organization or group is a party). Moreover, paragraph (c)(2)(iv) makes explicit that neither the ban on asserting contrary positions nor the prohibition on interpreting agency statutes is intended to proscribe the giving of testimony under oath. In order to take advantage of the exceptions to 18 U.S.C. 203 and 205 for representing family members or an estate, both statutes expressly require the approval of the Government official responsible for the employee's appointment. See 18 U.S.C. 203(d) and 205(e). To take advantage of the other exceptions set forth in paragraph (c)(2), the employee's supervisor must

determine that the representations are not “inconsistent with the faithful performance of [the employee’s] duties.” See 18 U.S.C. 205(d). These approval procedures are detailed in paragraph (c)(3).

Pro Bono

Paragraph (d) permits attorneys in OGC, subject to the restrictions in paragraph (c)(2), to provide outside *pro bono* legal services through a non-profit organization, without obtaining prior written approval. For example, VA attorneys may provide legal services *pro bono publico* in areas such as drafting wills or powers of attorney, assisting the preparation of domestic violence protective orders, and landlord-tenant disputes. These *pro bono* activities can generally be undertaken without detriment to the Department’s interests, provided that the employee adheres to the limitations of this rule. The Department encourages such volunteer legal activities, if not inconsistent with this supplemental regulation and the laws and regulations described above. Attorneys in the OGC who have questions about whether a specific *pro bono* legal service would comply with the limitations of this rule are encouraged to seek advance guidance from the Office of General Counsel’s Ethics Specialty Team.

III. Matters of Regulatory Procedure

Executive Orders 12866,13563 and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Executive Order 14094 (Executive Order on Modernizing Regulatory Review)

supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). The provisions in this proposed rule apply to internal matters of the agency, its employees and do not involve entities outside of VA. This rule will have no impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

List of Subjects in 5 CFR Part 10501

Conflict of interests, Government employees.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on May 16, 2023, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

Emory Rounds

Director, U.S. Office of Government Ethics

For the reasons set forth in the preamble, the Department of Veterans Affairs, with the concurrence of the Office of Government Ethics, proposes to amend title 5 of the Code of Federal Regulations by adding a new chapter CV, consisting of part 10501, to read as follows:

TITLE 5—ADMINISTRATIVE PERSONNEL

CHAPTER CV—DEPARTMENT OF VETERANS AFFAIRS

PART 10501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF VETERANS AFFAIRS

Sec.

10501.101 General.

10501.102 Prior approval for certain outside employment and other outside activities.

10501.103 Additional rules for attorneys in the Office of the General Counsel.

Authority: 5 U.S.C. 7301, 7353; 5 U.S.C. Ch. 131; 38 U.S.C. 501; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 5 CFR 2635.402(c), 5 CFR 2635.403(a), 5 CFR 2635.502, CFR 2635.604, 2635.802, 2635.803; 5 CFR 301; 5 CFR 512.

§ 10501.101 General.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Veterans Affairs (VA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

§ 10501.102 Prior approval for certain outside employment and other outside activities.

(a) *Prior approval requirement.* Except as provided in paragraph (e) of this section, an employee, other than a special Government employee, must obtain written

approval prior to:

(i) Engaging, with or without compensation, in outside employment with a prohibited source;

(ii) Serving, with or without compensation, as an officer, director, trustee, general partner, employee, consultant, or contractor for a Veteran-centric organization, such as a Veteran Service Organization or other organization, business, corporation, or charity with a mission focused on Veterans.

(b) *Definitions.* For purposes of this section:

(1) *Agency designee* has the meaning set forth in 5 CFR 2635.102(b).

(2) *Employment* means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, including self-employed business activities, whether or not for compensation. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing done under an arrangement with another person for production or publication of the written product. It does not, however, include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic organization, unless the participation involves the provision of professional services (compensated or not) or advice for compensation other than reimbursement for actual expenses.

(3) *Prohibited source* has the meaning described in 5 CFR 2635.203(d), and includes any person who:

(i) Is seeking official action by VA;

(ii) Does business or seeks to do business with VA;

(iii) Conducts activities regulated by VA;

(iv) Has interests that may be substantially affected by performance or

nonperformance of the employee's official duties; or

(v) Is an organization a majority of whose members are described in paragraphs (b)(3)(i) through (iv) of this section.

(4) *Veteran Service Organization* means an organization recognized by the Secretary of Veterans Affairs for the representation of Veterans under 38 U.S.C. 5902.

(5) *Veteran-centric organization* means an organization with a stated purpose of providing services or assistance to Veterans or their families, or of soliciting donations for Veterans or their families, as indicated by that organization's website, mission statement, charter, or other written material available to the public.

(c) *Submission of requests for approval.* An employee seeking to engage in any activity for which advance approval is required under paragraph (a) of this section must make a written request for approval no later than fourteen (14) calendar days before beginning the activity. The request shall be directed to the employee's supervisor. The supervisor shall submit the request and a statement addressing the extent to which the employee's duties are related to the proposed outside activity to an agency designee who shall make a final determination on the request. The agency designee may consult with an Office of General Counsel ethics attorney in making that determination.

(d) *Standard for approval.* Approval shall be granted unless it is determined that the outside employment or other outside activity is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

Note 1 to paragraph (d): The granting of approval for an outside activity does not relieve the employee of the obligation to abide by all applicable laws and regulations governing employee conduct, nor does approval constitute a sanction of any violation of any applicable law or regulation. Approval involves an assessment that the general activity as described on the submission does not appear likely to violate any criminal statutes or other ethics rules. Employees are reminded that during the course of an otherwise approvable activity, situations may arise, or actions may be contemplated, that, nevertheless, pose ethical concerns. Employees are encouraged to contact VA ethics officials for advice.

(e) *Issuance of instructions.* The designated agency ethics official (DAEO) may issue written instructions regarding the form, content, and manner of submission of requests under paragraph (c) of this section. The DAEO may include in these instructions examples of outside employment that are permissible or impermissible consistent with this part and 5 CFR 2635. The instructions also may establish a grace period for new employees to file a request for approval. The instructions may exempt categories of employment from the prior approval requirement of paragraph (a) of this section based on a determination by the DAEO that employment within those categories of employment will generally be approved and is not likely to involve conduct prohibited by Federal law or regulation, including 5 CFR part 2635 and this part.

(f) *Requirement to submit revised request.* Upon a significant change in either the nature of the outside employment or activity or in the employee's official Department position or duties, the employee must, within fourteen (14) calendar days of the change, submit a revised request for approval using the procedure in paragraph (c) of this section. An employee, other than a special Government employee, who is engaged in outside employment or an outside activity described in paragraph (a) of this section that began before the effective date of this part is subject to this requirement.

§ 10501.103 Additional rules for attorneys in the Office of the General Counsel

(a) *Additional rules for attorneys in the Office of the General Counsel regarding the outside practice of law.* Any attorney serving within the Office of the General Counsel shall obtain written approval, in accordance with the procedures set forth in § 10501.102(c) and the standard for approval set forth in paragraph (b) of this section, before engaging in the outside practice of law, whether compensated or not. For purposes of this section the “outside practice of law” means those activities requiring professional licensure by a state bar as an attorney and include, but are not limited to, providing legal advice to a client, drafting legal documents, and representing clients in

legal negotiations or litigation.

(b) *Standard for approval.* Approval shall be granted by the agency designee unless it is determined that the outside practice of law is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635, or paragraph (c) of this section.

(c) *Prohibited outside practice of law applicable to attorneys in the Office of the General Counsel.*

(1) *General prohibitions.* An employee who serves as an attorney within the Office of the General Counsel shall not engage in any outside practice of law that might require the attorney to:

(i) Assert a legal position that is or appears to be in conflict with the interests of the Department of Veterans Affairs, the client to which the attorney owes a professional responsibility; or

(ii) Interpret any statute, regulation, or rule administered or issued by the Department of Veterans Affairs, or where a supervisory attorney determines that the outside practice of law would conflict with the employee's official duties or create the appearance of a loss of the attorney's impartiality, as prohibited by 5 CFR 2635.802; or

(iii) Act as an agent or attorney in any matter in which the U.S. Government is a party or has a direct and substantial interest, as prohibited by 18 U.S.C. 205.

(2) *Exceptions.* Nothing in paragraph (c)(1) of this section prevents an attorney in the Office of the General Counsel from:

(i) Acting, with or without compensation, as an agent or attorney for, or otherwise representing, the employee's parents, spouse, child, or any other person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary to the extent permitted by 18 U.S.C. 203(d) and 205(e), or from providing advice or counsel to such persons or estates; or

(ii) Acting, without compensation, as an agent or attorney for, or otherwise representing, any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings, or from providing uncompensated advice and counsel to such person to the extent permitted by 18 U.S.C. 205; or

(iii) Acting, without compensation, as an agent or attorney for, or otherwise representing any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization's or group's members are current employees of the United States or the District of Columbia, or their spouses or dependent children. As limited by 18 U.S.C. 205(d), this exception is not permitted for any representation with respect to a matter which involves prosecuting a claim against the United States under 18 U.S.C. 205(a)(1) or 18 U.S.C. 205(b)(1), or involves a judicial or administrative proceeding where the organization or group is a party, or involves a grant, contract, or other agreement providing for the disbursement of Federal funds to the organization or group; or

(iv) Giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

(3) Specific approval procedures for paragraph (c)(2) of this section.

(i) The exceptions to 18 U.S.C. 203 and 205 described in paragraph (c)(2)(i) of this section do not apply unless the employee obtained the prior approval of the Government official responsible for the appointment of the employee to a Federal position.

(ii) The exceptions to 18 U.S.C. 205 described in paragraphs (c)(2)(ii) and (iii) of this section do not apply unless the employee has obtained the prior approval of a supervisory official who has authority to determine whether the employee's proposed representation is consistent with the faithful performance of the employee's duties.

(d) *Pro Bono activity*. Subject to compliance with paragraph (c) of this section, attorneys within the Office of the General Counsel are permitted to provide outside *pro bono* legal services (without compensation other than reimbursement of expenses) to organizations or individuals through a non-profit organization, without obtaining prior written approval in accordance with the procedures set forth in § 10501.102(c).

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